

808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.

RELATES TO: KRS 292.410(1)(q), 292.420(3), 17 C.F.R. 230.501

STATUTORY AUTHORITY: KRS 292.410(1)(q), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(q) authorizes the commissioner to grant exemptions for any transaction which the executive director by rule or order finds registration is not necessary or appropriate in the public interest or for the protection of investors. This administrative regulation establishes the requirements for claiming the registration exemption for a limited offering made exclusively to an accredited investor.

Section 1. Definition. "Accredited investor" is defined in 17 C.F.R. 230.501(a).

Section 2. An offer or sale of a security by an issuer in a transaction that meets the requirements established in this administrative regulation shall be exempt from KRS 292.340 through 292.390.

(1) To qualify for this exemption, the sale of a security shall be made exclusively to a person who is an accredited investor.

(2) The exemption shall not be available to an issuer that:

(a) Issues interests in an oil, gas, or mineral enterprise; or

(b)1. Is in the development stage; and

2.a. Has no specific business plan or purpose; or

b. Has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(3) The issuer shall reasonably believe that each purchaser is purchasing for investment and not with a view to or for sale in connection with a distribution of the security.

(a) A resale of a security sold in reliance on this exemption within twelve (12) months of sale, except a resale to an accredited investor or pursuant to a registration statement effective under KRS 292.340 through 292.390, shall be presumed to be with a view to distribution and not for investment.

(b) If resold, a security issued under this exemption shall be resold pursuant to registration or an exemption under KRS Chapter 292.

(4)(a) Except as provided in paragraph (b) of this subsection, this exemption shall not be available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten (10) percent or more of any class of its equity securities, any of the issuer's promoters, promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of the underwriter:

1. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by a state securities administrator or the United States Securities and Exchange Commission;

2. Within the last five (5) years, has been convicted of a criminal offense in connection with the offer, purchase or sale of a security, or involving fraud or deceit;

3. Is currently subject to a state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of a security; or

4. Is currently subject to an order, judgment or decree of a court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining the party from engaging in or continuing to engage in a conduct or practice involving fraud or deceit in connec-

tion with the purchase or sale of a security.

(b) Paragraph (a) of this subsection shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against the party; or

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.

(5)(a) The issuer may make a general announcement of the proposed offering through the use of electronic media or other means of communication.

(b) The general announcement shall state only the following information, unless the commissioner determines that additional information is in the public interest:

1. The name, address and telephone number of the issuer of the securities;

2. The name, a brief description and price (if known) of the security to be issued;

3. A brief description of the business of the issuer in twenty-five (25) words or less;

4. The type, number and aggregate amount of securities being offered;

5. The name, address and telephone number of the person to contact for additional information; and

6. A statement that:

a. A sale shall exclusively be made to an accredited investor;

b. Money or other consideration shall not be solicited or accepted; and

c. The security:

(i) Has not been registered with or approved by a state securities agency or the United States Securities and Exchange Commission; and

(ii) Is being offered and sold pursuant to an exemption from registration.

(6) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (5) of this section, if the information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) A telephone solicitation shall not be made unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) Dissemination of the general announcement of the proposed offering to a person who is not an accredited investor shall not disqualify the issuer from claiming the exemption under this administrative regulation.

(9) Within fifteen (15) days after the first sale in this state, the issuer shall file with the commissioner:

(a) A notice transaction;

(b) A consent to service of process;

(c) A copy of the general announcement; and

(d) A fee in the amount of \$250 as required by KRS 292.420(3).

Section 3. Adoption Without Change. 17 C.F.R. 230.501(a), as effective April 19, 1989, is adopted without change.

(2) This federal regulation may be inspected, copied, or obtained from the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (24 Ky.R. 2266; Am. 25 Ky.R. 96; eff. 6-25-98; 26 Ky.R. 1208; 1560; eff. 2-14-2000; TAm eff. 11-7-2012.)